



## RESOURCES RELATED LEGISLATION ENACTED IN 1998

By Jim Cook

The 1998 Nebraska Legislature adjourned sine die on April 14. The primary resources related bills are summarized below. For bills with the emergency clause, the effective date is noted in the summary. Other bills will become effective on July 15, 1998.



### LB 656: Funding for Niobrara Scenic River Council/Increase in Re- sources Development Fund Project Cost Cap

LB 656 had two purposes. The first was to provide the basis for state funding assistance for the Niobrara Scenic River Local Management Council. The bill and its accompanying "A" bill appropriated \$100,000

next fiscal year and \$50,000 for fiscal year 1999-2000. Intent is also provided to appropriate \$25,000 in fiscal year 2000-2001. That money is available to the local management council only if it includes representatives of the Cherry, Brown, Rock, and Keya Paha county boards, the Middle and Lower Niobrara Natural Resources Districts, the Nebraska Game and Parks Commission, the United States Fish and Wildlife Service, and the National Park Service. Also, zoning related ordinances or resolutions adopted by any of the four counties must provide for review of proposed zoning changes by the local management council.

The funding provided by the bill cannot be used for acquisition or leasing of title or easements to land. The money will be administered by the Nebraska Game and Parks Commission.

The bill also imposes some conditions on state actions that may be related to the Niobrara Scenic River designation. Any state or state-assisted activity or undertaking proposed within the federal boundaries of the scenic river cor-

(Continued on page 2)



## The Flood Mitigation (FMA) Program

By Steve McMaster

Last September the Commission began the administration of a new effort to reduce claims to the National Flood Insurance Program (NFIP). The Flood Mitigation Assistance (FMA) program can fund both community

flood mitigation planning efforts and projects that reduce flood impacts to communities. The Federal Emergency Management Agency (FEMA) allocates an amount of money to each State each year based on the number of NFIP premiums and the number of NFIP repetitive-loss properties. A grant approved last September was used to assist flood mitigation efforts in Beatrice.

In the FMA program, jurisdictions which are in good-standing in the NFIP are eligible to apply for two types of grants: planning grants and project grants. Planning grants are intended to help a community with the costs associated with developing a flood mitigation plan. The Commission is currently developing a guidebook which can assist communities in developing a plan. Project grants are used to fund eligible projects (i.e., acquisitions, relocation, elevation, demolition, floodproofing, or minor structural measures) which a community identifies in that plan.

For both kinds of grants, Federal money will pay up to 75% of the total cost with the remaining 25% coming from a non-Federal source. The only stipulation on the 25% match is that no more than half may come from in-kind contributions.



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## DIRECTOR'S COMMENTS

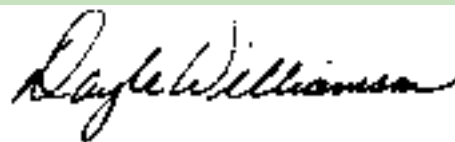
It was a great pleasure to join Warren D. Fairchild and his family on April 25, 1998 as he received the prestigious University of Nebraska Alumni Achievement Award. Warren served as the second full time Executive Secretary of the Nebraska Soil and Water Conservation Commission. (Now the Natural Resources Commission) He left this office twenty-eight years ago to become the Assistant Commissioner of the U.S. Bureau of Reclamation. Later he moved to the directorship of the U.S. Water Resources Council, then to the World Bank in Washington D.C. as a water specialist. He worked in numerous foreign countries to bring them new ways to better utilize soil and water resources throughout his tenure with the World Bank.

Warren began his career as a soil scientist with the Soil Conservation Service in 1949 soon after graduation from college. The Alumni Association honored him for "outstanding professional achievements at the local, state, federal and international levels in the field of natural resources conservation and management."

Upon receipt of the award, Fairchild said, "One of the highpoints of my professional life was the enactment of the Natural Resource District legislation." He described it as the most significant natural resources legislation enacted in Nebraska since the water rights legislation in the mid 1890's.

Even though Warren is called the "dean of the nation's water resources community" by many, and he has made hundreds of presentations at state, national and international seminars and workshops, he has never forgotten his roots. He is still extremely proud of the work he did in Gage County with the small watershed program and is very thankful that Nebraska has carried out a comprehensive natural resources program through the NRD's.

Warren and his wife Lois live in Alexandria, Virginia, and again it was a great joy joining many other fellow Nebraskan's to thank him for his many contributions and congratulate him on this highly deserved award.



*(1998 Resources Legislation Con't)*

ridor must be consistent with the applicable federal acts or be approved in writing by the Governor.

The second purpose of LB 656 is to increase the total project cost cap in the Resources Development Fund. Prior to the enactment of LB 656, the total cost of Resources Development Fund projects could not exceed \$15,000,000, with provisions for adjustments to that cap because of inflation. LB 656 raises that cost cap to \$17,000,000 and retains the inflation adjustment factor.

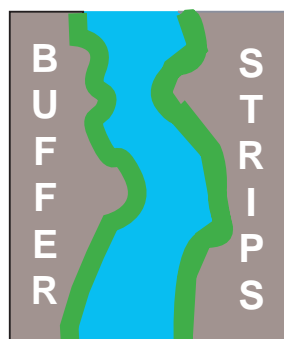
LB 656 had the emergency clause. It was approved by the Governor and became effective on April 14. LB 656A was vetoed by the Governor, but the veto was overwritten by the legislature and it also became effective on April 14.

### LB 1108: Deficit Appropriations

LB 1108 appropriated an additional \$250,000 of additional funds for the current fiscal year for the Nebraska Resources Development Fund. Also appropriated was money for the state's participation in the Cooperative Agreement for the Platte River. For the current year that is \$200,000 and for next year it is \$250,000. An additional \$250,000 will be needed in the year beginning July 1, 1999.

LB 1108 also appropriated dollars to the Department of Water Resources and to the Attorney General for defense of the anticipated lawsuit with Kansas on the Republican River. For DWR, those appropriations are \$217,600 for the current fiscal year and \$300,400 for next year. For the Attorney General, the amounts are \$32,400 for this year and \$129,600 for next year.

LB 1108 had the emergency clause. The portions referenced became effective with Governor Nelson's signature on April 9.



### LB 1126: Buffer Strip Incentive Fund

LB 1126 created a cost share program to provide an incentive for the installation of buffer strips. The Nebraska Department of Agriculture (DOA) is the responsible state agency. Natural resources districts will receive and review applications from interested landowners, forward those to the DOA, receive funds back from the DOA,

*(Continued on page 3)*

and then compensate the landowner in the amount agreed to. Funding for the Buffer Strip Program will come from an increase of \$60 in the pesticide registration fee. Current estimates are that between \$400,000 and \$500,000 will be raised each year through such increased fees. The accompanying "A" bill appropriated \$438,000 for each of the next two fiscal years for the program.

Under the bill, the DOA is to devise a statewide buffer strip plan with priority being given to the improvement of the quality of domestic and public water supplies. That plan is to be submitted to the Legislature by December 1, 1998. To help devise that plan and to otherwise assist with the program, LB 1126 creates a seven member Nebraska Pesticide Board.

The maximum per acre payment for any buffer strip will be \$150 per acre. If an applicant receives funds from any other source, such as CRP, the maximum payment under the state program will be reduced by the amount of any such funds available. The contractual agreement between the NRD and the landowner will be for a minimum of five years and a maximum of ten years. Renewals of agreements are however possible.

A priority ranking system will be included in the rules and regulations of the DOA to govern the distribution of the funds. Each application will have to be ranked for its water quality benefits from reduced soil erosion and runoff, its on-farm benefits of reduced soil erosion, and its costs per acre. Priority will be given to those applications which cre-

ate buffer strips at the lowest possible cost, assuming environmental protection benefits are equal in other respects.

### **LB 1161: Republican River Alluvial Wells, NRD Weather Modification, Wellhead Protection Areas, Petroleum Release Remedial Action Act Amendments, and Geologists Regulation Act**

LB 1161 includes several items of interest. The bill and its accompanying "A" bill provide dollars for cost-share assistance through the Nebraska Soil and Water Conservation Fund for the installation of measuring devices on wells in the Republican River alluvium. For wells which

qualify under the act, the cost-share available will be 50% of the cost of the measuring device and of the installation of that device. For the funds to

be available in the Republican River Basin, however, each of

the four natural resources districts in that basin (**Upper Republican, Middle Republican, Lower Republican, and Tri-Basin NRDS**) must adopt a program requiring installation of such measuring devices on at least 90% of the eli-

gible wells by April 1, 2001. If any district fails to achieve that goal, it will be expected to pay back whatever cost-share funds have been paid under the program in that district. The cost-share program is to last for three fiscal years, with the first beginning this July 1. \$500,000 has been appropriated for each of the next two fiscal years. An additional \$500,000 will need to be appropriated for the third year as part of the next budget cycle.

LB 1161 also amended the water well permitting section of the Groundwater Management and Protection Act by closing a loophole created by the exemption from permitting of water wells designed to pump less than 50 gpm. That loophole was allowing the permitting requirements to be circumvented by drilling multiple wells with each rated at under 50 gpm rather than a single, larger capacity well.

The bill also authorizes natural resources districts to be involved in and to sponsor weather modification programs. NRDs in the Republican River Basin have shown interest in such programs both to increase rainfall and to suppress hail.

Another portion of LB 1161 is the "Wellhead Protection Area Act." That Act authorizes any controlling entity of a public water supply system (*includes cities, villages, NRDs, rural water districts, and other public and private entities operating such systems*) to adopt boundaries and controls for a wellhead protection area.

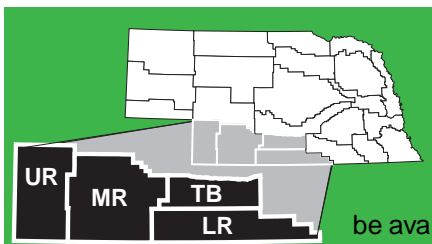
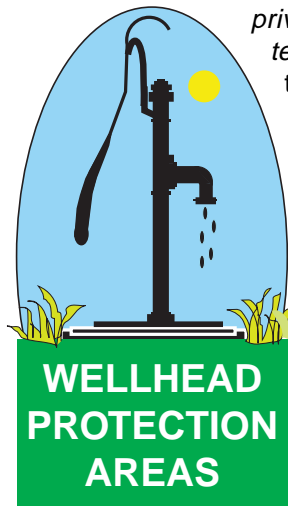
Such areas are defined as the surface and subsurface area surrounding a water well or wellfield, supplying a public water system, through which contaminants are reasonably likely to move toward and reach such well or wellfield. To adopt a wellhead protection area, a controlling entity will have to detail what its management plans are, subject those plans to a public hearing and submit them to the Director of Environmental Quality for approval.

Wellhead protection areas established before the effective date of that portion of the bill (July 15) will not have to be reestablished under the Act unless new controls are later proposed. In that event, the procedure established by the bill will have to be followed.

The last bill major addition to LB 1161 was a modified version of LB 700, a bill introduced in 1997 and called the Geologists Regulation Act. It provides for the licensure and regulation of geologists and prevents the practice of geology by other than licensed professional geologists.

Since LB 1161 resulted from a combination of so many different bills, it has a number of different operational dates. The cost-share program for the Republican River alluvial wells went into effect when the Governor's veto of LB 1161 was

(Continued on page 4)





overridden on April 14. However, the funds appropriated for the cost-share program are not available until July 1, 1998. The Wellhead Protection Area Act and the authorization for natural resources districts to be involved in weather modification will go into effect on July 15. The Geologists Regulation Act becomes operative on January 1, 1999.



### **LB 1209: Livestock Waste Management Act**

When enacted, LB 1209 had evolved from three separate bills introduced early in the session, lengthy committee discussion and debate, and additional debate and compromise on the legislative floor. It modifies the way the Department of Environmental Quality (DEQ) is to address livestock waste control facilities.

Under the bill, livestock operations will be categorized on the basis of animal units. Livestock waste control facilities are required, as under current law, if there is any potential for discharge to waters of the state. All new livestock operations required to have a waste control facility will need a permit before commencing construction of that waste control facility. Construction of other portions of the operation could begin before the permit was issued if the owner/operator acknowledged in writing that the permit might be rejected. A permit fee will be charged. That will be \$300 for Class I operations (less than 1,000 animal units); \$800 for Class II operations (1,000 to 5,000 animal units); \$1,500 for Class III operations (5,000 to 20,000 animal units); and \$5,000 for Class IV operations (more than 20,000 animal units). NRDs will be given notice of each application filed with DEQ and will have 20 days (20 day extension possible) to comment on any condition they believe relevant to DEQ's evaluation of the application. The county where the livestock waste operation is to be located will also be notified, but will not have any official role in commenting on the application. The public will also be given notice of any Class III or IV operations. DEQ has 60 days to approve or deny a permit after a complete application is received and has 30 days to inspect new operations once completed (extensions permitted for adverse weather, etc.).

NRDs are authorized to contract with DEQ to assume responsibility for action required or allowed under the Act, but that could not include issuing permits or initiating enforcement actions.

DEQ is also authorized to require livestock operations to employ BMPs for the purpose of either reducing pollutants to water or controlling odor. However, the initial regulations concerning odor will sunset on July 1, 1999. A nine-member advisory committee will be established to assist DEQ by reviewing proposed regulations, BMPs, etc.

With regard to existing operations that do not now have permits, they do not have to "register" with DEQ but do have until January 1, 2000 to request an inspection to see if they need a livestock waste control facility and a permit for that facility. If they comply, they will have amnesty from any violations up until the time DEQ either approves or denies a permit for that facility. If the request for inspection is made prior to January 1, 1999, there will be no fee. If it is made in 1999, the fee will be \$50 for Class I and II operations and \$500 for Class III and IV operations. The Department in conjunction with NRDs and the Cooperative Extension Service is required to publicize information to increase awareness by owner/operators of the need to seek an inspection of existing operations.

Once issued, construction permits will be valid for the life of the livestock facility, but they will be conditional, and can be modified to reflect changes in rules and regulations after the permit is issued. An owner/operator shall have one year to comply with any such changes.

The bill does not specify inspection or operation fees, but requires DEQ to conduct a study on that subject and to report back to the Legislature by December 1, 1998. The study is also to address and make recommendations about whether DEQ regulations should include requirements for financial assurance for Class III and IV operations and whether they should address odor control. The inspection or operations fees would not necessarily pay the full cost of administering and enforcing the Act. A portion of that may be funded by general funds. In that regard, DEQ will submit a report by January 1 of each year to the Legislature documenting all of its costs in carrying out the program. That report will be reviewed by the Appropriations Committee.

The bill has "bad actor" provisions which can be used to deny granting of a permit to individuals with poor records in complying with environmental regulations here in Nebraska or in other states.

The Department of Water Resources' statutes concerning permits for dams are also modified by the Act. In the future, an operator will be required to receive a permit from DWR before constructing any dam or lagoon for livestock waste control if it would, upon failure, result in any significant discharge and impact to the environment.

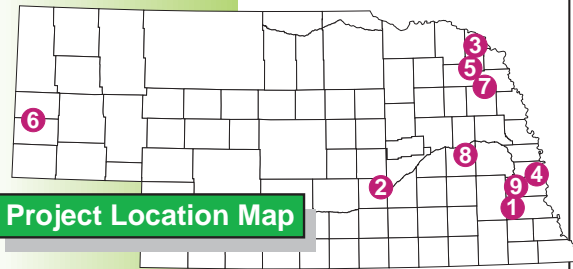
The Council on Environmental Quality (CEQ) is required to adopt rules and regulations within twelve months of the effective date of the Act. In addition to items addressed earlier in this summary, those regulations could require monitoring, e.g. monitoring wells, if it was determined that an operation posed a "significant risk to waters of the state."

In the event that DEQ has insufficient funds or personnel to enforce all provisions of the Act uniformly on all operators, priority in enforcement is to be given first to Class IV operations, then Class III operations, etc.

## FY 99 Funds Obligated to Natural Resources Development Fund Projects

by Tom Pesek

At its April 30, 1998, meeting, the Commission obligated a **total of \$2,642,198.12 to six Nebraska Resources Development Fund projects** for Fiscal Year 1999. All six projects had been obligated funds in previous years. Three newly approved projects did not receive funds for FY 99 at this time as priority is given to previously funded projects.



Project Location Map

## NRDF Projects Approved

by Tom Pesek

At its April 30, 1998, meeting, the Natural Resources Commission approved state financial assistance through the Nebraska Resources Development Fund for three projects:

The **Powder Creek Project**, sponsored by the Lewis & Clark NRD, is a multi-purpose structure in the Aowa Creek Watershed, a P.L. 566 project planned, designed, and principally funded by NRCS. The project will result in a 112-acre reservoir located about six miles southeast of Newcastle. The project will reduce the potential for flooding in the City of Ponca and the recreational opportunities at the site will complement Ponca State Park. The Commission approved a NRDF grant of \$453,671.40 for this project.

The **Wakefield Levee Project**, sponsored by the City of Wakefield, will provide 100-year flood protection to the City of Wakefield from flooding along Logan Creek. The project consists of a levee on the north and east sides of the community, a highway closure structure, and flood-proofing of three city wells. The city has also applied to FEMA for funding through the Hazard Mitigation Grant Program. A NRDF grant of \$719,838 was approved by the Commission for this project.

The Commission also reaffirmed its 1989 action on the **Skull Creek Site 55 Project**. This multi-purpose structure will have a 37-acre conservation pool and is located north of Bruno. The Lower Platte North NRD, project sponsor, has been working to attain the required level of land treatment above the structure site. The grant approved for this project was increased to \$494,943 due to increased costs since 1989.

More information about these projects will appear in future issues of "Nebraska Resources".

### NRDF FY 99 Obligated Funds

Project	Sponsor	FY 99 Funds Requested	FY 99 Funds Received
(1) Upper Little Nemaha Watershed	Nemaha NRD	\$1,096,202.60	\$530,111.66
(2) Lower Wood River/Upper Warm Slough	Central Platte NRD	1,403,225.00	631,938.55
(3) Powder Creek	Lewis & Clark NRD	295,425.00	0.00
(4) Papio Site 21	Papio-Missouri River NRD	743,148.72	743,148.72
(5) Wakefield Levee	City of Wakefield	257,140.00	0.00
(6) Gering Canal	Gering Irrigation District and North Platte NRD	29,937.19	29,937.19
(7) Pender Flood Control	Village of Pender	286,098.00	286,098.00
(8) Skull Creek Site 55	Lower Platte North NRD	181,488.00	0.00
(9) Weeping Water Creek Watershed	Lower Platte South NRD	420,964.00	420,964.00
Total		\$4,713,628.51	\$2,642,198.12

## 10<sup>th</sup> Annual Children's Groundwater Festival

Nebraska Natural Resources Commission staff members were among the many volunteers and students who attended the 1998 Children's Groundwater Festival held March 24<sup>th</sup>. The festival brought 3,000 young students to the Central Community College and College Park campuses located in Grand Island to learn about groundwater. Among the Nebraska youth attending the festival this year were students representing five other states along with representatives from Canada, Australia, England, Russia, Panama and Zimbabwe.

Over the past ten years the Groundwater Foundation and its many volunteers have brought the importance of groundwater and related topics to the attention of over **30,000 students, teachers and parents** from not only Nebraska but numerous other states and countries. Some of those young students from early festivals are now attending colleges and universities throughout the United States and hopefully have taken and kept some water wisdom within them. It can only be a plus to have young people become more aware of the importance of natural resources, and that is what the Groundwater Foundation and their Children's Groundwater Festival helps do.

The Nebraska Natural Resources Commission staff and members are proud to be a small part of a very worthy activity that promotes the importance of our groundwater resource.

## NEBRASKA RESOURCES SPRING, 1998/p.6

————— (1998 Resources Legislation Con't) —————

One other provision of LB 1209 is worthy of note. In passing the new Engineers and Architects Regulation Act in 1997, the Legislature provided for supervision of design and construction of livestock waste facilities by registered engineers. LB 1209 allows DEQ to determine what the engineering requirement should be for Class I livestock waste control facilities and for existing nonpermitted livestock waste control facilities.

LB 1209A was also adopted. It provides about \$55,000 for each of the next two years to the Department of Water Resources for its added responsibilities in approving some dams and lagoons for livestock waste facilities. The bill also appropriates funds to DEQ. For FY 98-99, about \$255,000 is appropriated from the General Fund and an equal amount from the Livestock Waste Management Cash Fund. For FY 99-00, the appropriations are \$184,000 from the General Fund and \$327,000 from the Livestock Waste Management Cash Fund.

LB 1209 and LB 1209A were both passed with the emergency clause and went into effect with Governor Nelson's signature on April 14.

### INTERIM STUDY RESOLUTIONS

Several interim study resolutions addressing natural resources topics were introduced and have been assigned to the standing committees. Space limitations prevent us from listing them here, but please contact our office if you would like to review those resolutions.

### STATE OF NEBRASKA

E. Benjamin Nelson, Governor



### NEBRASKA NATURAL RESOURCES COMMISSION

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